

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0895-02
Bill No.: Truly Agreed To and Finally Passed SCS for HJR 16
Subject: Constitutional Amendments; Criminal Procedure; Evidence; Children and Minors
Type: Original
Date: May 30, 2013

Bill Summary: This proposal proposes a constitutional amendment to allow evidence of prior criminal acts to be admissible in prosecutions for crimes of a sexual nature involving a victim under eighteen years of age.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
General Revenue	\$0 or (More than \$7,100,000)	\$0	\$0
Total Estimated Net Effect on General Revenue Fund	\$0 or (More than \$7,100,000)	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 6 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Total Estimated Net Effect on FTE	0	0	0

☐ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☐ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

In response to a previous version of the proposal, according to the **Office of the Secretary of State (SOS)**, each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Joint Resolutions proposing a constitutional amendment are submitted to a vote of the people at the next general election. Article XII section 2(b) of the Missouri Constitution authorizes the governor to order a special election for constitutional amendments referred to the people. If a special election is called to submit a Joint Resolution to a vote of the people, section 115.063.2, RSMo, requires the state to pay the costs. The cost of the special election has been estimated to be \$7.1 million based on the cost of the 2012 Presidential Preference Primary. This figure was determined through analyzing and totaling expense reports from the 2012 Presidential Preference Primary received from local election authorities.

The Secretary of State's Office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Sections 116.230-116.290, RSMo. The Secretary of State's Office is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. Funding for this item is adjusted each year depending upon the election cycle with \$1.3 million historically appropriated in odd numbered fiscal years and \$100,000 appropriated in even numbered fiscal years to meet these requirements. The appropriation has historically been an estimated appropriation because the final cost is dependent upon the number of ballot measures approved by the General Assembly and the initiative petitions certified for the ballot. In FY 2013, at the August and November elections, there were 5 statewide Constitutional Amendments or ballot propositions that cost \$2.17 million to publish (an average of \$434,000 per issue). Therefore, the Secretary of State's Office assumes, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. However, because these requirements are mandatory, we reserve the right to request funding to meet the cost of our publishing requirements if the Governor and the General Assembly change the amount or eliminate the estimated nature of our appropriation.

Oversight has reflected in this fiscal note, the state potentially reimbursing local political subdivisions the cost of having this joint resolution voted on during a special election in fiscal year 2014. This reflects the decision made by the Joint Committee on Legislative Research, that the potential cost of elections should be reflected in the fiscal note. The next scheduled general

ASSUMPTION (continued)

election is in November 2014 (FY 2015). It is assumed the subject within this proposal could be on that ballot; however, it could also be on a special election called for by the Governor. Therefore, Oversight will reflect a potential election cost reimbursement to local political subdivisions in FY 2014.

Officials from the **Department of Corrections** assumes passage of this bill may increase the probability of convictions in cases where the specifics outlined in the bill exist; however, there is no way to determine for certain if it does, either before or after passage of the amendment. DOC assumes no fiscal impact from the proposal.

Officials from the **Office of the State Public Defender (SPD)** state HJR 16 will have an impact on the State Public Defender System. The claim, SPD believes, is that only 20% of these cases are now being charged. If the number is increased from 20% being charged to 100% being charged, that is a five-fold increase. The question is five times what number - of all our statutory sex cases, or of all statutory sex cases with propensity evidence? It is not clear what the claim is, but SPD believes the HJR will have an impact on the State Public Defender System.

In FY 2012, the SPD provided representation in 496 statutory sex cases. These cases are generally charged as A/B Felony cases. Per NAC standards, attorney time can provide representation in 150 felonies each year. If you assume just 80% are not charged rather than 20%, an additional 1984 statutory sex cases could be charged. 1984 sex cases divided by 150 sex cases per year per attorney yields an additional 13 public defender attorneys. The cost of 13 additional attorneys and adequate support and the expense and equipment to support them is approximately \$1.5 million.

In response to previous version of the resolution, the SPD stated while the number of new cases (or cases with increased penalties) may be too few or uncertain to request additional funding for this specific bill, the SPD will continue to request sufficient appropriations to provide effective representation in all cases.

Oversight assumes the SPD could absorb any additional caseload that may result from this resolution, upon voter approval, with existing resources.

Officials from the **Attorney General's Office** assume that any potential costs arising from this proposal could be absorbed with existing resources.

ASSUMPTION (continued)

Officials from the **Office of the State Courts Administrator, Office of Prosecution Services** and the **Department of Public Safety - Missouri Highway Patrol** each assume the proposal would not fiscally impact their respective agencies.

<u>FISCAL IMPACT - State Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
GENERAL REVENUE			
<u>Transfer Out</u> - Office of the Secretary of State - reimbursement of local election authorities for election costs if a special election is called by the Governor	\$0 or (More than <u>\$7,100,000</u>)	<u>\$0</u>	<u>\$0</u>
ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	<u>\$0 or (More than \$7,100,000)</u>	<u>\$0</u>	<u>\$0</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
LOCAL ELECTION AUTHORITIES			
<u>Transfer In</u> - Cost reimbursement from the State for special election	\$0 or More than \$7,100,000	\$0	\$0
<u>Expense</u> - Cost for special election	<u>\$0 or (More than \$7,100,000)</u>	<u>\$0</u>	<u>\$0</u>
ESTIMATED NET EFFECT TO LOCAL ELECTION AUTHORITIES	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

Upon voter approval, this proposed constitutional amendment allows relevant evidence of prior criminal acts, whether charged or uncharged, to be admissible in the prosecution for a crime of a sexual nature involving a victim under 18 years of age for the purpose of corroborating the victim's testimony or demonstrating the defendant's propensity to commit the crime with which he or she is presently charged.

The court may exclude relevant evidence of prior criminal acts if the probative value is substantially outweighed by the danger of unfair prejudice.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of the Secretary of State
Office of Prosecution Services
Office of the State Courts Administrator
Department of Corrections
Department of Public Safety
Attorney General's Office
Office of the State Public Defender



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Acting Director
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